

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Charles K. Verhoeven (Bar No. 170151)

2 charlesverhoeven@quinnemanuel.com

David A. Perlson (Bar No. 209502)

3 davidperlson@quinnemanuel.com

Melissa Baily (Bar No. 237649)

4 melissabaily@quinnemanuel.com

John Neukom (Bar No. 275887)

5 johnneukom@quinnemanuel.com

Jordan Jaffe (Bar No. 254886)

6 jordanjaffe@quinnemanuel.com

50 California Street, 22nd Floor

7 San Francisco, California 94111-4788

Telephone: (415) 875-6600

8 Facsimile: (415) 875-6700

9 Attorneys for WAYMO LLC

10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION

13 WAYMO LLC,

14 Plaintiff,

15 vs.

16 UBER TECHNOLOGIES, INC.;
OTTOMOTTO LLC; OTTO TRUCKING LLC,

17 Defendants.

CASE NO. 3:17-cv-00939

**PLAINTIFF WAYMO LLC'S REPLY IN
SUPPORT OF MOTION FOR RELIEF
FROM NON-DISPOSITIVE PRETRIAL
ORDER OF MAGISTRATE JUDGE (DKT.
832)**

Judge: The Honorable William Alsup

Trial Date: October 10, 2017

1 This Court should sustain Plaintiff Waymo LLC (“Waymo’s”) Objections to the Magistrate
2 Judge’s Order Regarding Lyft-Related Documents (Dkt. 832).

3 **I. THE COURT’S ORDER COMPELLING PRODUCTION BY WAYMO UNDOES**
4 **ITS ORDER WITH RESPECT TO LYFT.**

5 As Waymo pointed out in its Objections, in the Order below, Magistrate Judge Corley took
6 inconsistent positions with respect to Waymo and Lyft’s production of documents. (Dkt. 876, at
7 1.) With respect to Lyft, the Court stated: “Defendants’ suggestion that the protective order covering
8 this case ameliorates any confidentiality concerns . . . is unavailing.” (Dkt. 832, at 5.) Yet, despite
9 recognizing Lyft’s confidentiality concerns, the Court went on to order Waymo to produce the very
10 documents that Lyft argued should not be produced. (*Id.*) Uber’s response ignores this practical
11 impact of the Court’s ruling. (*See* Dkt. 919.) Instead, in its response to Waymo’s Objections, Uber
12 argues that the Court did not err in applying a different legal standard with respect to discovery from
13 parties versus third parties, a point Waymo never contested. (Dkt. 919, at 1, 3-4.) Regardless of the
14 standard applied, requiring Waymo to produce the same documents about which the Court found
15 Lyft’s confidentiality concerns valid, eviscerates the Court’s finding as to confidentiality with respect
16 to Lyft.

17 Additionally, Waymo showed in its Objections that the Court reached an inconsistent
18 conclusion as to whether the documents sought go to “industry practice.” (Dkt. 876, at 3.) With
19 respect to Lyft, the Court said:

20 Lyft has demonstrated that “even if any of the purported trade secrets were
21 exchanged, there is no question that those trade secrets were received pursuant to
22 [the companies’ non-disclosure] agreement and the other confidentiality protections
23 that Lyft (and Waymo) put into place.” Further, the issue in this lawsuit is how
[Waymo] treated its information, not how Lyft treats its information. Under that
reasoning, Defendants would be entitled to subpoena all technological companies
to determine ‘industry practice’ in the treatment of technological information.

24 (Dkt. 832, at 5.) Waymo argued that this analysis applies equally to the request for Lyft-related
25 documents from Waymo purportedly to determine “industry practice.” (Dkt. 876, at 3.) Uber
26 ignores this inconsistency in the Order as well. (*See* Dkt. 919.)

1 **II. WAYMO IS ALREADY PRODUCING DOCUMENTS DIRECTED AT THE**
 2 **ISSUES TO WHICH UBER CLAIMS THE LYFT DOCUMENTS ARE**
 3 **RELEVANT.**

4 Waymo already agreed to produce documents responsive to other RFPs, which go to the same
 5 issues to which Uber claims the Lyft deal documents are relevant. (Dkt. 876.) Waymo identified
 6 those specific Uber RFPs for which it has agreed to produce documents in its Opposition. (Dkt. 746,
 7 at 5-6.) Thus, the Court's finding that Waymo's position is that Uber should be limited to "what
 8 [Waymo] contends is relevant" was incorrect. In response to Waymo's Objections, Uber ignores these
 9 RFPs and Waymo's agreement to produce documents in response to them. (See Dkt. 919.) Thus,
 10 Waymo's argument is un rebutted by Uber. And correspondingly, Uber's implication that Waymo is
 11 cherry-picking helpful documents to produce is meritless.

12 Uber complains that Waymo does not explain how documents produced in response to these
 13 other requests will provide an adequate substitute for documents relating to the Lyft deal. (Dkt. 919, at
 14 4.) But Uber knows what documents Waymo agreed to produce in response to these requests. They
 15 have been subject to multiple meet and confers and correspondence. Waymo agreed to produce, and
 16 has produced: documents sufficient to show Waymo's estimates of the size of the ride-sharing market
 17 in the United States for each of the last six years (RFP 90); documents sufficient to show Waymo's
 18 forecasts of the size of the ride-sharing market in the United States for each of the next six years (RFP
 19 91); documents sufficient to show Waymo's forecasts regarding its number of ride-sharing vehicles in
 20 the United States, by U.S. city, on a quarterly basis, for each of the next five years (RFP 92);
 21 documents sufficient to show Waymo's business plans, strategic plans, operating plans, marketing
 22 plans, financial plans, sales plans, and investment plans for its ride-sharing business (RFP 93);
 23 documents sufficient to show Waymo's analysis of any barriers to entry in the ridesharing market, and
 24 the status of any attempts by Waymo to overcome any such barriers, including remaining investments
 25 and infrastructure needed (RFP 94); and documents sufficient to show Waymo's knowledge of
 26 Defendants' autonomous vehicle program, including discussion of Defendants' self-driving car
 27 business (RFPs 96-97). Waymo agreed to produce and did produce this information in the form of
 28 presentations, as well as email communications about the industry. Such documents are responsive to

1 the same issues Uber claims the Lyft partnership documents are relevant to, and adequately address
2 those issues. Uber does not need the additional Lyft documents.

3
4 Waymo respectfully requests that this Court sustain Waymo's Objections and hold that
5 Waymo is not required to produce documents responsive to Request Nos. 149-153 and 156. In the
6 alternative, the Court should narrow the scope of the documents Waymo is required to produce in
7 response to Request Nos. 149-153, and limit them to any documents from the Lyft deal and
8 negotiations relating to it which discuss Waymo's trade secrets at issue in this case. This narrowed set
9 of documents, to the extent they exist, would address the subject matter Uber purports to seek with
10 these Requests.

11
12
13 DATED: July 19, 2017

QUINN EMANUEL URQUHART & SULLIVAN, LLP

14 By /s/ Charles K. Verhoeven

15 Charles K. Verhoeven
16 Attorneys for WAYMO LLC
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